

Testimony of Paulette Brack – on House Concurrent Resolution 13
Volunteer for Parental Rights.org

Before the Michigan House of Representatives
Judiciary Committee
June 5, 2014

Mr. Chairman and members of the Committee, thank you very much for the opportunity to testify as a volunteer for ParentalRights.org in support of HCR 13.

President Obama recently declared, “In the end, there is no program or policy that can substitute for a mother or father.”

For ninety years the fundamental right of parents to direct the upbringing and education and care of their children has been consistently upheld by the U.S. Supreme Court. Yet today, the policies and decisions of federal, state and local agencies are undermining the critically important parent-child relationship.

These actions include removing children from their homes without sufficient cause, intimidating and threatening parents with the loss of their children if they don’t cooperate, withholding information from parents about important issues including library and medical information, questioning children at school or in medical facilities without parental knowledge or consent, and intervening in parental decision-making by fit parents.

Through law and policy, government workers and officials are establishing a new tradition that views government—but not parents—as the authority in deciding what is in the best interests of children.

This year, former Massachusetts education secretary Paul Reville asserted that “the children belong to all of us.”

In Texas, parents were concerned and outraged when the Texas Attorney General said, “Is it true that the State of Texas owns our children? Yes, it is true...”

Michigan Law states: It is the natural, fundamental right of parents and legal guardians to determine and direct the care, teaching, and education of their children.

To protect parental rights, ten states have already passed similar Parental Rights statutes or a Resolution supporting the Parental Rights Amendment. Another eleven states have measures pending.

What the Parental Rights Amendment Will Not Do

- The Amendment **will not make** fundamental parental rights an “**absolute**” right. Fundamental rights require **strict scrutiny**, but the government can restrict a fundamental right when it has a compelling reason to do so, such as instances of neglect or abuse.

Parental Rights Amendment, Section 3

Strict scrutiny: a standard of judicial review that requires a showing of a compelling governmental interest met by the least restrictive means.

- Recognizing parental rights within the Constitution will not hinder the ability of the state to provide **protection for children**.

Parental Rights Amendment, Section 3

- The Parental Rights Amendment **does not protect child abusers**: it protects innocent parents from being treated like child abusers, absent evidence of wrongdoing.

Parental Rights Amendment, Section 1 and 3

- The Amendment **does not shift power to Congress**, unlike amendments that allow Congress “to enforce this article by appropriate legislation.”

The Thirteenth, Fourteenth, Fifteenth, Nineteenth, Twenty-third, Twenty-fourth, and Twenty-sixth Amendments all contain such a provision. The proposed Parental Rights Amendment does not.

- The Amendment will not expand the use of ‘**the best interests of the child**’ standard to empower international and federal “**decision and policy makers with the authority to substitute their own decisions for either the child’s or the parents’**.” Certainly decisions should be made in the best interests of children.

Best Interest of the Child Principle - An Explanation

The best interest of the child principle is an age-old concept that first emerged as an articulate standard in American adoption law in the mid-1800s.¹ The best interest of the child is a dispositional standard, designed to guide judges when making decisions that concern children. Under traditional American family law such decisions only fall to a judge after a parent has been convicted of abuse or neglect, or in a divorce context when there is conflict between competing parents. The U.S. Supreme Court has consistently recognized “that natural bonds of affection lead parents to act in the best interests of their children.”² American law has historically operated on the presumption that parents are fit to make decisions in the interest of their children unless proven otherwise.

This new human rights application of the best interest of the child principle, as implemented in U.N. treaties abolishes the presumption of parental fitness. Under this misapplication, judicial prerogative to determine the child’s best interest becomes the default, rather than a last-resort reserved for when a parent has been proven unfit. Parents’ private choices for their children can be called into question any time government personnel disagree with them.

International law expert Geraldine Van Bueren clearly describes this emerging human rights application:

Best interests provides decision and policy makers with the authority to substitute their own decisions for either the child's or the parents', providing

it is based on considerations of the best interests of the child. Thus, the Convention challenges the concept that family life is always in the best interests of children and that parents are always capable of deciding what is best for children.³

Using the “*best interest of the child*” standard used in Customary International Law shifts parental decisions to the federal government and removes authority from our state legislatures, contrary to American tradition, governance, and our Constitution.

What the Parental Rights Amendment Will Do

- Simply stated, the Parental Rights Amendment **recognizes** the fundamental right of parents as upheld in case law for more than 80 years of our nation’s history.
U.S. Supreme Court, Troxel v. Granville, 530 U.S. 57 (2000) at 65, citing *Pierce v. Society of Sisters*, 268 U.S. 510 (1925) *et al.*
- The proposed Parental Rights Amendment will preserve this time-honored principle in the actual text of the Constitution just as the Bill of Rights preserves other fundamental rights.
- Parental rights would change from an **implied** right based on judicial opinions to an **express right** based upon actual constitutional text.
Parental Rights Amendment, Section 1
- The proposed Amendment will restore the traditional application of the “**strict scrutiny**” standard of review to cases involving parents’ fundamental rights.
JUSTICE THOMAS, concurring in judgment, *Troxel v. Granville*, 530 U.S. 57 (2000) at 80: “The opinions of the plurality, JUSTICE KENNEDY, and JUSTICE SOUTER recognize such a [fundamental parental] right, but curiously none of them articulates the appropriate standard of review. I would apply **strict scrutiny** to infringements of fundamental rights.”
- Section Three of the Amendment expressly preserves the current interest of the state government to **protect children from abuse and neglect** in situations where intervention is legitimately required by declaring that while parental rights are important, they have limits. The government may intervene when the interest is of the highest order and not otherwise served.
U.S. Supreme Court, Wisconsin v. Yoder, 406 U.S. 205 (1972)
- The Amendment will **protect Michigan’s statutes** and Constitution from federal takeover through international treaty ratification. This secures the authority of **Michigan legislators** to continue to make laws for Michigan families.
Parental Rights Amendment, Section 5; *United Nations Convention on the Rights of the Child*, Article 51. 3; United States Constitution, Article VI; *Reid v. Covert*, 354 U.S. 1 (1957) at 17-18; *The Necessity of the Parental Rights Amendment to the United States Constitution*, William Wagner
- Section Five provides that only laws made in America by the people themselves through our legislatures can be used in American courts. It de-authorizes the Senate from entering into any treaty that yields our sovereignty regarding American parents and American children. It was **not the intent** of the writers of our Constitution **that domestic law be passed under the treaty power**. This section is the only means of protecting parents and the States from unintended consequences arising from Article VI as it stands in today’s international world.
Under the *Vienna Convention on the Law of Treaties* (VCLT), **international legal obligations are of superior rank to national law**—even if that law is from the **national constitution**. The exception is in Article 46 of the VCLT which says that a nation is not bound by a treaty if a provision of its internal law “of fundamental importance” precludes its “competence to conclude [such] treaties.”
- The Amendment will preserve our existing law and legal tradition against judicial confusion and the ever-growing threat of international law.
Beharry v. Reno, 183 F.Supp.2d 584 (E.D. N.Y. 2002) and *Nicholson v. Williams*, 203 F.Supp.2d 153 (E.D. N.Y. 2002)

We must defend parental rights within the text of the Constitution itself, which is the only way to secure parental rights forever for our children, for our grandchildren, and future generations of Americans. Placing parental rights in the text of the Constitution ensures that law will defend the American family.

Conclusion

No government, regardless of how well-intentioned it might be, can replace the love and nurture of a parent in the life of a child. A parent is willing to brave danger and sacrifice hardship and heartache. A parent cares, not because her children are 'wards' for whom she is responsible.

If we are to secure American's rich heritage of freedom from the decisions of American judges and from the dangers of international law, we must act now to enshrine these rights in the surest protector of our rights and liberties – The Constitution of the United States. Nothing short of a Constitutional Amendment can ensure that we and our children will have the freedom to raise the next generation to preserve the blood-bought liberties for which our nation's founders gave their lives, liberties which are now at risk.

The American family is the backbone of our society and it needs to be strengthened, not disabled. Please protect Michigan families by supporting HCR 13 to protect parental rights as upheld by current Michigan Law.

NOTES:

- 1 . Lynne Marie Kohm , "Tracing the Foundations of the Best Interests of the Child Standard in American Jurisprudence," Regent University School of Law , 9 (2009).
- 2 . *Parham v. J. R.*, 442 U.S. 584 (1979). To see more about the Supreme Court's position on parental rights, click [here](#).
- 3 . Geraldine Van Bueren, lawyer, law professor, and drafter of the Convention on the Rights of the Child (CRC), *International Rights of the Child, Section D*, University of London, 46 (2006).

PARENTAL RIGHTS AMENDMENT

Section 1. The liberty of parents to direct the upbringing, education, and care of their children is a fundamental right.

Section 2. The parental right to direct education includes the right to choose public, private, religious, or home schools, and the right to make reasonable choices within public schools for one's child.

Section 3. Neither the United States nor any State shall infringe these rights without demonstrating that its governmental interest as applied to the person is of the highest order and not otherwise served.

Section 4. This article shall not be construed to apply to a parental action or decision that would end life.

Section 5. No treaty may be adopted nor shall any source of international law be employed to supersede, modify, interpret, or apply to the rights guaranteed by this article.

113th Congress, H.J. Res. 5